



# DISCIPLINARY INVESTIGATIONS



# WHAT IS AN INVESTIGATION

These investigations are fact-finding exercises to establish any wrongdoing within the workplace and if disciplinary is required.

This resource covers:

- Appointing an investigator
- External investigators
- Suspensions
- Types of physical evidence
- What to do when refusal to provide evidence occurs
- How an investigation report should be written.



# BEHAVIOUR THAT REQUIRES AN INVESTIGATION

- Bullying or harassment
- Sexual assault or harassment
- Gross negligence
- Physical or verbal assault
- Discriminating against protected characteristics





# DISCIPLINARY INVESTIGATIONS

Disciplinary investigations, if conducted properly, can play an important role in identifying wrongdoings and support an employer with fair, objective, and informed decision-making.

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While every investigation will be unique in its facts and circumstances, there are general principles that should be followed to help manage risk and safeguard positive workplace relations.

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Investigations are fact-finding exercises that collect all the pertinent information and evidence relating to any alleged misdemeanour. Making decisions on a workplace disciplinary without a reasonable investigation can render any decisions or actions taken unfair or unlawful and certainly risky.

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If it has been decided an investigation needs to take place, the employer should act promptly as any unnecessary delay may give the perception of unfairness.

# DISCIPLINARY INVESTIGATIONS

The employer needs to determine at the outset of the investigation process what the purpose and scope of the investigation will be, known as 'terms of reference'. They should include what the investigation will examine, whether a recommendation is needed, how the investigator's findings will be presented and who the findings will be reported to.





# APPOINTING AN INVESTIGATOR

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An investigator should be appointed to carry out the investigation and it is crucial that they are not associated or involved with the allegations being investigated.

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They have to remain objective throughout and have to act both fairly and reasonably to establish the facts. With this in mind, they have to collect both evidence supporting the allegation, and evidence refuting it.

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The investigator's role is not to prove the guilt of one party, but to try to determine what actually happened. It is important that they stay focused on what the issues are and don't detract from those

# EXTERNAL INVESTIGATOR

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Organisations are increasingly turning to external investigators to preserve the objectivity of the investigation's findings, particularly where the case involves complex matters, reputationally sensitive issues, or senior members of the workforce.

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If the employer's grievance or disciplinary procedures contain suggested or required timescales, these should be followed. However, whilst investigations should really be completed as quickly as possible, they also need to be fair and reasonable.

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Investigations should be kept confidential, even if it becomes common knowledge that one is being conducted. You should explain to all staff involved the importance of maintaining confidentiality, and make clear that if any employee breaches confidentiality, it may be viewed as a disciplinary matter.

# SUSPENSIONS

Suspension should only be considered during an investigation if it is needed to protect the investigation, the organisation, other employees or the employee under investigation.

Every investigation is different and the information and facts that need to be considered will also differ.





# PHYSICAL EVIDENCE

Physical evidence can include:

- Witness statements
- Emails
- Paperwork
- CCTV footage
- Receipts
- Computer data
- Phone records
- Attendance records

The employee in question should have seen and have had the opportunity to comment on all the evidence.



# EVIDENCE

The investigator will also need to obtain information from the employee, witnesses, and other witnesses which may involve clients or customers. If several people witnessed the same incident, and the accounts are consistent, then the investigator may not need to interview other witnesses unless they require further information or clarification on the matter.





# REFUSAL TO PROVIDE EVIDENCE

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Some employees will be reluctant to provide evidence for an investigation. In such instances, the investigator should explore the reasons behind their reticence and reassure them anything they say will be treated confidentially.

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Employees do not have the statutory right to be represented at a disciplinary investigation meeting, but employers should follow their own custom and practice.

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An employee only has a right to be accompanied to a hearing or meeting where a formal warning is to be given or other disciplinary action is going to be taken.

# INVESTIGATION REPORTS

**An investigation report should include all the facts that were and were not established and whether there are any mitigating factors that require consideration. Although an investigator may seek advice from a third party, the conclusions they reach must be their own.**

**The report should be written:**

In an objective style

Reporting only the facts

Avoiding jargon and nicknames

Including all the evidence

Should be concise



**IF YOU WOULD LIKE TO DISCUSS HOW WE  
CAN HELP SUPPORT YOU WITH YOUR  
RECRUITMENT NEEDS AND BEYOND  
PLEASE GET IN TOUCH**

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